

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE

**FORTY-FIFTH LEGISLATIVE DAY
WEDNESDAY, FEBRUARY 23, 2005**

Senate Chamber

At the request of the President Pro Tempore, Acting President Cameron called the Senate to order at 10:45 a.m.

Roll call showed all members present except President Pro Tempore Geddes and Senator Noble, absent and formally excused by the Chair; and Senators Andreason, Brandt, Burkett, Gannon, Keough, Langhorst, Marley, Pearce, and Schroeder, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Alison Coats, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senators Burkett, Gannon, and Schroeder were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 22, 2005, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SCR 113

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND HONORING THE IDAHO FALLS POST REGISTER ON THE ONE HUNDRED TWENTY-FIFTH ANNIVERSARY OF ITS FOUNDING.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Idaho Register was first published in Eagle Rock in July of 1880 by William Wheeler and over the years that newspaper merged with the Times to become the Times-Register; and

WHEREAS, J. Robb Brady, son of former Idaho Governor and U.S. Senator James Brady, purchased the Daily Post in Idaho Falls in 1925 and died shortly thereafter and E. F. McDermott became publisher, a post he held until his death in 1977; and

WHEREAS, in 1931 the Daily Post and the Times-Register merged, forming the Post-Register, a name it has retained since, although the hyphen was consigned to obscurity in 1989; and

WHEREAS, the Post Register's history and longevity are rare, but rarer still is the fact that the newspaper today remains privately and locally owned and even more unusual is that forty-nine percent of the newspaper's stock is employee owned; and

WHEREAS, since 1998, nearly all of the newspaper's profits have gone toward buying stock in the paper on behalf of its employees; and

WHEREAS, the Post Register is Idaho's second largest newspaper, serving ten eastern Idaho counties and reaching more than sixty thousand readers a day.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we wish to recognize and commend the important achievement of the Post Register's one hundred twenty-fifth anniversary of its founding.

BE IT FURTHER RESOLVED, that the Secretary of the Senate be, and she is hereby authorized and directed to send a copy of this resolution to Mr. Roger Plathow, the Publisher of the Post Register.

SCR 113 was introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Brandt and Langhorst were recorded present at this order of business.

February 23, 2005

The JUDICIARY AND RULES Committee reports that **S 1158**, **S 1159**, and **S 1160** have been correctly printed.

DARRINGTON, Chairman

S 1158 was referred to the Health and Welfare Committee.

S 1159 was referred to the Transportation Committee.

S 1160 was referred to the Finance Committee.

February 22, 2005

The JUDICIARY AND RULES Committee reports that Enrolled **SCR 105** was delivered to the Office of the Secretary of State at 11:08 a.m., February 22, 2005.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

February 22, 2005

The TRANSPORTATION COMMITTEE reports out **S 1084, S 1110, and S 1127** with the recommendation that they do pass.

BRANDT, Chairman

S 1084, S 1110, and S 1127 were filed for second reading.

February 22, 2005

The HEALTH AND WELFARE Committee reports out **SCR 110** with the recommendation that it do pass.

COMPTON, Chairman

SCR 110 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 22, 2005

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 126 and S 1112** with the recommendation that they do pass.

BUNDERSON, Chairman

H 126 and S 1112 were filed for second reading.

February 23, 2005

The AGRICULTURAL AFFAIRS Committee reports out **S 1106** with the recommendation it do pass.

WILLIAMS, Chairman

S 1106 was filed for second reading.

February 23, 2005

The STATE AFFAIRS Committee reports out **H 46, H 47, and S 1114** with the recommendation that they do pass.

BURTENSHAW, Chairman

H 46, H 47, and S 1114 were filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

February 22, 2005

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that Blake Hall of Idaho Falls, Idaho, was appointed as a member of the Idaho State Board of Education to serve a term commencing March 1, 2005, and expiring March 1, 2010.

This appointment was made subject to confirmation by the Senate. Notice of appointment is hereby given.

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Gubernatorial appointment was referred to the Education Committee.

February 22, 2005

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bill, to wit:

S 1003

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

February 22, 2005

Mr. President:

I transmit herewith **H 111, H 113, H 115, H 122, H 147, H 187, H 184, H 181, H 176, H 33, H 41, HJM 3, and H 150** which have passed the House.

JUKER, Chief Clerk

H 111, H 113, H 115, H 122, H 147, H 187, H 184, H 181, H 176, H 33, H 41, HJM 3, and H 150 were filed for first reading.

February 22, 2005

Mr. President:

I return herewith **SCR 106** which has passed the House.

JUKER, Chief Clerk

SCR 106 was referred to the Judiciary and Rules Committee for enrolling.

February 22, 2005

Mr. President:

I transmit herewith Enrolled **H 29** and **H 31** for the signature of the President.

JUKER, Chief Clerk

The Acting President announced that Enrolled **H 29** and **H 31** will be held at the Secretary's desk for the signature of the President and, when so signed, will be returned to the House.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

Senators Andreason, Keough, Marley, and Pearce were recorded present at this order of business.

The Acting President announced the Commerce and Human Resources Committee report relative to the Gubernatorial appointment of Gavin Gee was before the Senate for final consideration, the question being, "Shall the report be adopted?"

On motion by Senator Werk, seconded by Senator Andreason, the Gubernatorial appointment of Gavin Gee as a member of the Idaho Endowment Fund Investment Board was confirmed by voice vote.

The Acting President declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The Acting President announced that **SCR 112** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Andreason, seconded by Senator Burkett, **SCR 112** was adopted by voice vote, title was approved, and the resolution ordered transmitted to the House.

The Acting President announced that **SJM 102** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Schroeder, seconded by Senator Stennett, **SJM 102** was adopted by voice vote, title was approved, and the memorial ordered transmitted to the House.

The Acting President announced that **SJM 103** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Goedde, seconded by Senator Stennett, **SJM 103** was adopted by voice vote, title was approved, and the memorial ordered transmitted to the House.

The Acting President announced that **SJM 104** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Goedde, seconded by Senator Stennett, **SJM 104** was adopted by voice vote, title was approved, and the memorial ordered transmitted to the House.

The Acting President announced that **SJM 105** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Brandt, seconded by Senator Little, **SJM 105** was adopted by voice vote, title was approved, and the memorial ordered transmitted to the House.

The Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1161

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5224, IDAHO CODE, TO REQUIRE AN AGENCY TO PUBLISH A NOTICE OF ADOPTION OF THE PENDING RULE IN THE BULLETIN, TO INCLUDE IN THE NOTICE OF ADOPTION THE SPECIFIC STATUTORY AUTHORITY FOR THE RULEMAKING INCLUDING A CITATION TO THE SPECIFIC SECTION OF THE IDAHO CODE THAT HAS OCCASIONED THE RULEMAKING, OR THE FEDERAL STATUTE OR REGULATION IF THAT IS THE BASIS OF AUTHORITY OR REQUIREMENT FOR THE RULEMAKING, TO REQUIRE IN AN AGENCY'S NOTICE OF ADOPTION A SPECIFIC DESCRIPTION, IF APPLICABLE, OF ANY NEGATIVE FISCAL IMPACT ON THE STATE GENERAL FUND GREATER THAN TEN THOUSAND DOLLARS DURING THE FISCAL YEAR WHEN THE PENDING RULE WILL BECOME EFFECTIVE, PROVIDED HOWEVER, THE ABSENCE OR ACCURACY OF A FISCAL IMPACT STATEMENT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE RULE, AND TO PROVIDE THAT NO PENDING RULE OR PORTION THEREOF WHICH HAS SPECIFIED IN ITS NOTICE OF ADOPTION THAT THE RULE WOULD HAVE A NEGATIVE FISCAL IMPACT ON THE STATE GENERAL FUND GREATER THAN TEN THOUSAND DOLLARS DURING THE FISCAL YEAR WHEN THE PENDING RULE WILL BECOME EFFECTIVE, SHALL BECOME FINAL AND EFFECTIVE UNTIL IT HAS BEEN APPROVED BY CONCURRENT RESOLUTION.

S 1161 was introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 111, H 113, H 115, and H 122, by Business Committee, were introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

H 147, H 187, H 184, and H 181, by Transportation and Defense Committee, were introduced, read the first time at length, and referred to the Transportation Committee.

H 176, by Environment, Energy, and Technology Committee, was introduced, read the first time at length, and referred to the Health and Welfare Committee.

H 33, by Agricultural Affairs Committee, was introduced, read the first time at length, and referred to the Agricultural Affairs Committee.

H 41, by Health and Welfare Committee, was introduced, read the first time at length, and referred to the Health and Welfare Committee.

HJM 3, by Health and Welfare Committee, was introduced, read at length, and referred to the Health and Welfare Committee.

H 150, by State Affairs Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

S 1120 and **S 1137**, by Judiciary and Rules Committee, were read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

President Pro Tempore Geddes was recorded present at this order of business.

On request by Senator Davis, granted by unanimous consent, **S 1074**, as amended, having been held, retained its place on the Third Reading Calendar.

S 1142 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Langhorst arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Brandt, Broadsword, Bunderson, Burkett, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Richardson, Schroeder, Stegner, Stennett, Sweet, Werk, Williams. Total - 33.

NAYS--Pearce. Total - 1.

Absent and excused--Noble. Total - 1.

Total - 35.

Whereupon the Acting President declared **S 1142** passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The Acting President declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the Acting President called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **S 1036** and **S 1068**, without recommendation, amended as follows:

SENATE AMENDMENT TO S 1036

AMENDMENT TO SECTION 1

On page 1 of the printed bill, in line 19, following "Code." insert: "For required services that are not included in the Idaho medicaid reimbursement schedule, the state board of correction shall pay the reasonable value of such service."

SENATE AMENDMENT TO S 1068

AMENDMENT TO THE BILL

On page 1 of the printed bill, delete lines 21 through 41 and delete pages 2 through 16 and insert:

"SECTION 1. That Chapters 43 and 45, Title 39, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 45, Title 39, Idaho Code, and to read as follows:

CHAPTER 45

THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4501. PURPOSES -- APPLICATION. (1) The primary purposes of this chapter are:

(a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures, and concerning what constitutes an informed consent for such care, treatment or procedures; and

(b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.

(2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3, title 66, Idaho Code, as those provisions pertain to medical attendance upon or hospitalization of the mentally ill, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.

(3) Nothing in this chapter shall be construed to permit or require the provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require

the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

39-4502. PERSONS WHO MAY CONSENT TO THEIR OWN CARE. Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his or her own behalf. Any physician, dentist, hospital or other duly authorized person may provide such health care and services in reliance upon such a consent if the consenting person appears to the physician or dentist securing the consent to possess such requisite intelligence and awareness at the time of giving the consent.

39-4503. PERSONS WHO MAY GIVE CONSENT TO CARE FOR OTHERS. (1) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures to any person who is not then capable of giving such consent as provided in this chapter or who is a minor or incompetent person, may be given or refused in the order of priority set forth hereafter unless the patient is a competent person who has refused to give such consent, and provided further that this subsection shall not be deemed to authorize any person to override the express refusal by a competent patient to give such consent himself:

- (a) The legal guardian of such person;
- (b) The person named in a "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter;
- (c) If married, the spouse of such person;
- (d) A parent of such person;
- (e) Any relative representing himself or herself to be an appropriate, responsible person to act under the circumstances;
- (f) Any other competent individual representing himself or herself to be responsible for the health care of such person; or
- (g) If the subject person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental or surgical care to such patient, the attending physician or dentist may, in his or her discretion, authorize and/or provide such care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such physician or dentist, may proceed as if informed, valid consent therefor had been otherwise duly given.

(2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental or surgical care, treatment or procedures to another as provided by this chapter shall be subject to civil liability therefor.

(3) No physician, dentist, hospital or other duly authorized person who in good faith obtains consent from a person pursuant to either section 39-4502 or 39-4503(1), Idaho Code, shall be subject to civil liability therefor.

39-4504. BLOOD TESTING. (1) A physician may consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without the prior consent of the patient if:

(a) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and

(b) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent pursuant to section 39-4503, Idaho Code.

(2) The department of health and welfare shall promulgate rules identifying the blood-transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

(3) Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results.

(4) Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested or by such person's authorized representative, or as otherwise authorized by law, shall be guilty of a misdemeanor.

39-4505. SUFFICIENCY OF CONSENT. Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if the person giving the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon, such a patient receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

39-4506. FORM OF CONSENT. It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

39-4507. RESPONSIBILITY FOR CONSENT AND DOCUMENTATION. Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; provided however, a licensed hospital and any medical or dental office lay or professional employee, acting with the approval of such an attending or other physician or dentist, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the patient. In performing such a ministerial act, the hospital or medical or dental office lay or professional employee shall not be deemed to have engaged in the practice of medicine or dentistry.

39-4508. STATEMENT OF POLICY. For purposes of sections 39-4508 through 39-4514, Idaho Code:

(1) The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The legislature further finds that patients are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the patient because of the patient's inability to communicate with the physician.

(2) In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to have his wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the physician.

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in this chapter are the only effective means of such communication, and nothing in this chapter shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes with respect to health care should be honored.

39-4509. DEFINITIONS. As used in sections 39-4508 through 39-4514, Idaho Code:

(1) "Artificial life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which when applied to a qualified patient, would serve only to artificially prolong life. "Artificial life-sustaining procedure" does not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(2) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.

(3) "Attending physician" means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(4) "Competent person" means any emancipated minor or any person eighteen (18) or more years of age who is of sound mind.

(5) "Consent to care" includes refusal to consent to care and/or withdrawal of care.

39-4510. LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. A "Living Will and Durable Power of Attorney for Health Care" executed prior to the effective date of this act, but which was in the "Living Will" and/or "Durable Power of Attorney for Health Care" form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. A "Living Will and Durable Power of Attorney for Health Care" or similar document(s) executed in another state which substantially complies with this chapter shall be deemed to be in compliance with this chapter. In this chapter, a "Living Will and Durable Power of Attorney for Health Care" may be referred to as a "directive." Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive:

Name of person executing Directive:

Address of person executing Directive:

A LIVING WILL A Directive to Withhold or to Provide Treatment

1. Being of sound mind, I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

a. I have an incurable injury, disease, illness or condition and two (2) medical doctors who have examined me have certified:

1. That such injury, disease, illness or condition is terminal; and

2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and

3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

Check one box and initial the line after such box:

☐ I direct that all medical treatment, care and procedures necessary to restore my health, sustain my life, and to abolish or alleviate pain or distress be provided to me. Nutrition and

hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

☐ I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

- A. ☐ Only hydration of any nature, whether artificial or nonartificial, shall be administered;
- B. ☐ Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;
- C. ☐ Both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.

OR

☐ I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. This Directive shall be the final expression of my legal right to refuse or accept medical and surgical treatment, and I accept the consequences of such refusal or acceptance.

3. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

4. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent:
 Address of Health Care Agent:
 Telephone Number of Health Care Agent:

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this Directive, including as set forth in paragraph 2 immediately above, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services and procedures, including such desires set forth in a living will or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in a living will or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations:
 (You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital Against Medical Advice"; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental

capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. First Alternate Agent:

Name
Address
Telephone Number

B. Second Alternate Agent:

Name
Address
Telephone Number

C. Third Alternate Agent:

Name
Address
Telephone Number

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at (City, State).....

.....
Signature

39-4511. REVOCATION. (1) A "Living Will and Durable Power of Attorney for Health Care" may be revoked at any time by the maker thereof, without regard to his mental state or competence, by any of the following methods:

(a) By being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

(b) By a written, signed revocation of the maker thereof expressing his intent to revoke; or

(c) By an oral expression by the maker thereof expressing his intent to revoke.

(2) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a "Living Will and Durable Power of Attorney for Health Care" made pursuant to this section unless that person has actual knowledge of the revocation.

39-4512. EXECUTION OF LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE. A "Living Will and Durable Power of Attorney for Health Care" shall be effective from the date of execution unless otherwise revoked. Nothing in this chapter shall be construed to prevent a competent person from reexecuting a "Living Will and Durable Power of Attorney for Health Care" at any time.

39-4513. IMMUNITY. (1) No medical personnel or health care facility shall be civilly or criminally liable for acts or omissions carried out or performed pursuant to the directives in a facially valid living will or by the holder of a facially valid durable power of attorney or directive for health care if the medical personnel or health care facility acts in good faith.

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient as expressed by the procedures set forth in this chapter may withdraw without incurring any civil or criminal liability provided the physician or other health care provider makes a good faith effort to assist the patient in obtaining the services of another physician or other health care provider before withdrawal.

(3) No person who exercises the responsibilities of a durable power of attorney for health care in good faith shall be subject to civil or criminal liability as a result.

39-4514. GENERAL PROVISIONS. (1) This chapter shall have no effect or be in any manner construed to apply to persons not executing a "Living Will and Durable Power of Attorney for Health Care" pursuant to this chapter nor shall it in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care, neither shall this chapter be construed to affect chapter 3, title 66, Idaho Code, in any manner.

(2) The making of a "Living Will and Durable Power of Attorney for Health Care" pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a "Living Will and Durable Power of Attorney for Health Care" as a condition for being insured for, or receiving, health care services.

SECTION 3. That Section 5-332, Idaho Code, be, and the same is hereby amended to read as follows:

5-332. CONSENT FOR EMERGENCY MEDICAL TREATMENT. The authorization or refusal of consent for emergency medical treatment under sections 5-330 or 5-331, Idaho Code, shall be governed by chapter 435, title 39, Idaho Code.

SECTION 4. That Section 31-3910, Idaho Code, be, and the same is hereby amended to read as follows:

31-3910. CONSENT FOR EMERGENCY MEDICAL TREATMENT. The authorization or refusal of consent for emergency medical treatment under chapter 39, title 31, Idaho Code, shall be governed by chapter 435, title 39, Idaho Code.

SECTION 5. That Section 39-3902, Idaho Code, be, and the same is hereby amended to read as follows:

39-3902. DEFINITIONS. For purposes of this chapter, the following words and terms have the meanings hereinafter stated:

(1) "Emergency medical treatment" means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) "Evaluation committee" means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master's level; a clinical psychologist or a psychiatrist; and a physician.

(3) "Informed assent" means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) "Interested person" means an interested, responsible adult including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) "Medically necessary" means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) "Person subject to this chapter" means all adults, except adults who may consent to their own treatment pursuant to chapter 435, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) "Physician" means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) "Records" includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) "Sterilization" means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

SECTION 6. That Section 54-1142, Idaho Code, be, and the same is hereby amended to read as follows:

54-1142. AUTHORITY IN ABSENCE OF PRE-ARRANGED FUNERAL PLAN. (1) If the decedent has not made a prearranged funeral plan as set forth in section 54-1139, Idaho Code, the right to control the disposition of the remains of a deceased person vests in, and devolves upon the following in the order named:

(a) The person designated in a written document executed by the decedent and acknowledged in the same manner as required for instruments conveying real property, and subject to such limitations, restrictions, or directions, as may be set forth in such document;

(b) The person designated as agent under a durable power of attorney for health care executed by the decedent, unless such durable power of attorney for health care contains express and clear language denying such right;

(c) The person designated in a durable power of attorney executed by the decedent, if such power of attorney contains express and clear language granting such right to the agent named in such power of attorney;

(d) The competent surviving spouse of the decedent;

(e) A majority of the competent surviving adult children of the decedent, provided that less than one-half (½) of the competent surviving adult children shall be vested with the right to control the disposition of the remains of the decedent if they have used reasonable efforts to notify all other competent surviving adult children of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of more than one-half (½) of all competent surviving adult children;

(f) The competent surviving parents or parent of the decedent, provided that if one (1) of the competent surviving parents is absent, the remaining competent surviving parent shall be vested with the right to control the disposition of the remains of the decedent after reasonable efforts have been made and are unsuccessful in locating the absent competent surviving parent;

(g) The person appointed by a court of competent jurisdiction as the personal representative or administrator of the estate of the decedent;

(h) The person nominated as the personal representative of the estate of the decedent in the will of the decedent;

(i) The competent adult person or persons entitled to inherit from the decedent under the intestate succession laws of the state of Idaho, respectively in the next degrees of kinship, provided that if there is more than one (1) competent surviving adult person of the same degree of kinship, the majority of those persons, and provided further that less than the majority of competent surviving adult persons of the same degree of kinship shall be vested with the right to control the disposition of the remains of the decedent if those persons have used reasonable efforts to notify all other competent surviving adult persons of the same degree of kinship of their instructions to dispose of the decedent's remains and are not aware of any opposition to those instructions on the part of one-half (½) or more of all competent surviving adult persons of the same degree of kinship.

(2) If any person to whom the right of control has vested pursuant to the foregoing has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next qualifying person as listed above as if the charged person did not exist; provided however, that if the charges against such person are dropped, or if such person is acquitted of the charges, the right of control is returned to the person.

(3) For purposes of this section:

(a) "Adult" means an individual who is eighteen (18) years of age or older;

(b) "Child" means a natural or adopted child of the decedent;

(c) "Competent" means the individual has not been declared incompetent by a court of law, or who has been declared competent by a court of law after a prior declaration of incompetence;

(d) "Durable power of attorney" means a power of attorney described in section 15-5-501, Idaho Code, or any similar document properly executed under the laws of another jurisdiction; and

(e) "Durable power of attorney for health care" means the document described in ~~section 39-4505~~ chapter 45, title 39, Idaho

Code, or any similar document properly executed under the laws of another jurisdiction;

(f) "Will" means any testamentary device which is valid under the Idaho probate code, including, but not limited to, sections 15-2-503, 15-2-504 and 15-2-506, Idaho Code, whether or not originally executed in, or under the laws of, the state of Idaho.

(4) (a) A cemetery authority or licensed funeral director or a licensed hospital or its authorized personnel may permit or assist in, and a physician may perform, an autopsy of any remains of a decedent in its custody:

(i) If the decedent, prior to his death, authorizes an autopsy in his will or in another written instrument, including, but not limited to, a durable power of attorney for health care; or

(ii) Upon the receipt of a written authorization signed by, telegraphed from, or received by facsimile transmission from, a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer; or

(iii) Upon the receipt of an oral authorization obtained by telephone, and recorded on tape or other recording device, from a person representing himself to be the person who is entitled under this section to control the disposition of the remains of the decedent, or to be a coroner or any other duly authorized public officer.

(b) A cemetery authority or a licensed funeral director of a licensed hospital or its authorized personnel is not liable for permitting or assisting, and a physician is not liable for performing, an autopsy pursuant to the authorization provided in paragraph (a) of this subsection unless he has actual notice that such representation is untrue at the time the autopsy is performed. If such authorization is contained in a will, the autopsy may be performed regardless of the validity of the will in other respects and regardless of whether the will may not be offered for, or admitted to, probate until a later date.

(c) This subsection shall not authorize the obtaining of an oral authorization by telephone, recorded on tape or other recording device, for the autopsy of a deceased person if it is made known to the physician who is to perform the autopsy that the deceased person was, at the time of his death, a member of a religion or group which opposes autopsies.

SECTION 7. That Section 56-1015, Idaho Code, be, and the same is hereby amended to read as follows:

56-1015. FAILURE TO OBTAIN CONSENT. No person certified under sections 56-1011 through 56-1018B, Idaho Code, or physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under sections 56-1011 through 56-1018B, Idaho Code, shall be governed by chapter 43~~5~~, title 39, Idaho Code.

SECTION 8. That Section 66-405, Idaho Code, be, and the same is hereby amended to read as follows:

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(a)(1) through (4), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include:

(a) A description of the respondent's current mental, physical and social condition;

(b) The respondent's present address and living arrangement;

(c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;

(d) A description of services being provided the respondent;

(e) A description of significant actions taken by the guardian or conservator during the reporting period;

(f) Any significant problems relating to the guardianship or conservatorship;

(g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and

(h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would

seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section ~~39-4303(c)~~ 39-4503(1)(g), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

(a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or

(b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(9) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided.

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

(a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;

(b) Consent to experimental surgery, procedures or medications; or

(c) Delegate the powers granted by the order."

CORRECTION TO TITLE

On page 1, delete lines 2 through 19 and insert:

"RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT; REPEALING CHAPTERS 43 AND 45, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 45, TITLE 39, IDAHO CODE, TO SET FORTH PURPOSES, TO PROVIDE FOR CHAPTER APPLICATION, TO STATE WHO MAY CONSENT TO THEIR OWN CARE, TO STATE WHO MAY GIVE CONSENT TO CARE FOR OTHERS, TO PROVIDE FOR BLOOD TESTING, TO SET FORTH PROVISIONS APPLICABLE TO SUFFICIENCY OF CONSENT AND THE FORM OF CONSENT, TO SET FORTH RESPONSIBILITY FOR CONSENT AND DOCUMENTATION, TO PROVIDE A STATEMENT OF LEGISLATIVE POLICY, TO DEFINE TERMS, TO PROVIDE FOR A LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE, TO PROVIDE FOR REVOCATION, TO PROVIDE FOR EXECUTION, TO PROVIDE IMMUNITY AND TO SET FORTH GENERAL PROVISIONS; AMENDING SECTION 5-332, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3910, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-3902, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1142, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-1015, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE."

The Committee also has **S 1154** under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Malepeai, the report was adopted by voice vote.

S 1036, as amended, and **S 1068**, as amended, were referred to the Judiciary and Rules Committee for engrossing and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Thirteenth Order of Business.

Third Reading of Bills

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate recessed at 12:05 p.m. until the hour of 4:30 p.m. of this day.

RECESS
AFTERNOON SESSION

The Senate reconvened at 4:30 p.m., pursuant to recess, President Pro Tempore Geddes presiding.

Roll call showed all members present except Senator Noble, absent and formally excused by the Chair; and Senators Brandt, Burkett, Gannon, Keough, Langhorst, Little, Marley, Stegner, and Sweet, absent and excused.

Prior to recess the Senate was at the Thirteenth Order of Business, Third Reading of Bills.

Senators Keough, Little, Marley, and Stegner were recorded present at this order of business.

S 1149 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Cameron arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Broadsword, Bunderson, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce, Richardson, Schroeder, Stegner, Stennett, Werk, Williams. Total - 29.

NAYS--None.

Absent and excused--Brandt, Burkett, Gannon, Langhorst, Noble, Sweet. Total - 6.

Total - 35.

Whereupon the President Pro Tempore declared **S 1149** passed, title was approved, and the bill ordered transmitted to the House.

Senators Langhorst and Sweet were recorded present at this order of business.

S 1094 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Darrington arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Broadsword, Bunderson, Burtenshaw, Cameron, Coiner, Compton, Darrington, Goedde, Jorgenson, Lodge, McGee, McKenzie, Richardson, Schroeder, Sweet, Williams. Total - 17.

NAYS--Corder, Davis, Geddes, Hill, Kelly, Keough, Langhorst, Little, Malepeai, Marley, Pearce, Stegner, Stennett, Werk. Total - 14.

Absent and excused--Brandt, Burkett, Gannon, Noble. Total - 4.

Total - 35.

Whereupon the President Pro Tempore declared **S 1094** passed, title was approved, and the bill ordered transmitted to the House.

S 1122 was read the third time at length, section by section, and placed before the Senate for final consideration. Senators Darrington and Kelly arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Broadsword, Bunderson, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce, Richardson, Schroeder, Stegner, Stennett, Sweet, Werk, Williams. Total - 31.

NAYS--None.

Absent and excused--Brandt, Burkett, Gannon, Noble.
Total - 4.

Total - 35.

Whereupon the President Pro Tempore declared **S 1122** passed, title was approved, and the bill ordered transmitted to the House.

H 11, as amended in the Senate, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator McKenzie arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Broadsword, Bunderson, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce, Richardson, Schroeder, Stegner, Stennett, Sweet, Werk, Williams. Total - 31.

NAYS--None.

Absent and excused--Brandt, Burkett, Gannon, Noble.
Total - 4.

Total - 35.

Whereupon the President Pro Tempore declared **H 11**, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

On request by Senator Davis, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills amended in the Senate, followed by House bills.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 5:30 p.m. until the hour of 10:30 a.m., Thursday, February 24, 2005.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary